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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,679	02/08/2002	Thomas S. Kilpela	647 P 067	4180

7590
Garrettson Ellis
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55 East Monroe Street
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09/11/2003

EXAMINER

ROBERTS, PAUL A

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,679

Applicant(s)

KILPELA ET AL.

Examiner

Paul A Roberts

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,5 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,5 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 2 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauer et al. US 5496341. For the purpose of simplicity, all references that contain multiple inventors (for example Smith et al.) will be referenced by only the first inventor (Smith). The full name of the inventive identity will be disclosed the first time the reference is cited, and abbreviated in the above manner thereafter.
2. Sauer discloses a first handle 20, a second handle 40, a pair of jaws 22 and 47, the jaws are capable of crushing/wire crimps positioned between said jaws, the jaw has a first and second sidewall which are laterally spaced, the first and second walls have crimp retaining prongs, the second jaw comprises a gripping and crushing projection 48 operative to move toward said crimp space between said first wall and said second wall as the interactive jaw portions are pivoted closed. The crimp retaining prongs define part of the outer walls of a pair of transversely extending crimp retaining troughs.
3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson US 4,541,312 in view of Sauer et al. US 5496341.
4. Petersen discloses a quick squeeze tool with a U-Shaped handle (28, figure 1) that is capable of facilitating closure of the tool. Further, the Petersen ratchet mechanism has a spring

(26, figure 1) that biases the handle to the extreme end of its pivotal range, as illustrated in figure

1. The jaw structure of the Peterson device differs from the applicant's jaw structure. The Sauer device discloses a tool containing all the limitations of the applicant's jaw structure. Sauer explains that his jaw structure allows a blood vessel to be clamped before cutting it. The addition of the Sauer blade would add the utility of cutting to the Peterson device. At the time of the invention it would have been obvious to one of ordinary skill in the art to add the Sauer jaws to the Petersen tool to enable the tool to cut blood vessels.

5. Claims 7-8 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Burke 5,545,168 in view of Nelson 4,643,054. Burke discloses all the limitations of claim 3, but does not disclose the inclusion of an auxiliary handle w/ a limited range of pivotal movement. Nelson teaches a quick squeeze tool with a handle (50, figure 6) that is capable of facilitating closure of the tool. Further, the ratchet mechanism has a spring (46, figure 6) that biases the handle to the extreme end of its pivotal range, as illustrated in figure 6. The motivation to add the handle would be to release the Nelson ratchet mechanism. The motivation to add the Nelson ratchet mechanism to the Burke device would be to allow the tool to automatically stay in a partially closed position. At the time of the invention it would have been obvious to one of ordinary skill in the art to add the Nelson ratchet mechanism and handle to the Burke device for the purpose of allowing the tool to automatically stay in a partially closed position

6. Claims 9-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Burke in view of Petersen US 4,541,312. The Burke device discloses the crimping pliers comprising 2 handles and specialized jaws, but does not disclose an auxiliary handle having a U-shaped configuration. Petersen teaches a quick squeeze tool with a U-Shaped handle (28, figure 1) that

is capable of facilitating closure of the tool. Further, the Petersen ratchet mechanism has a spring (26, figure 1) that biases the handle to the extreme end of its pivotal range, as illustrated in figure

1. The motivation to add the handle would be to release the Petersen ratchet mechanism. The motivation to add the Petersen ratchet mechanism to the Burke device would be to allow the tool to automatically stay in a partially closed position. At the time of the invention it would have been obvious to one of ordinary skill in the art to add the Petersen ratchet mechanism and handle to the Burke device for the purpose of allowing the tool to automatically stay in a partially closed position.

Response to Arguments

7. Regarding applicant's argument concerning newly presented claims 2, 5, and 12.

Applicant's argument is moot in view of new grounds of rejection.

8. Regarding applicant argument concerning claims 7 and 8, applicant is challenging the motivation to combine the Burke reference and the Nelson reference. Applicant's argument is concerned with the fact that one of ordinary skill in the art would not add the Nelson handle to the Burke device because the Burke device doesn't contain a pawl. The examiner stated in the Office action dated 4/2/03 "At the time of the invention it would have been obvious to one of ordinary skill in the art to add the Nelson ratchet mechanism and handle to the Burke device for the purpose of allowing the tool to automatically stay in a partially closed position." Thus the combined reference would require the handle of Nelson to release the pawl, which is part of the ratchet mechanism. The motivation is clear, the handle would be required to release the ratchet mechanism. Thus the combination was proper, and the rejection of claims 7-8 is maintained.

9. Applicant did not argue against the combination of Burke and Peterson; the combination renders obvious the limitations of claims 9-11. It is therefore assumed the combination is proper and rejection of claims 9-11 is thus maintained.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Howell et al. US 2002/0183785 Surgical clamp.

Yoon US 5797958 Endoscopic grasping tool.

Qureshi et al. US 5951587 Needle holder

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A Roberts whose telephone number is (703) 305-7558. The examiner can normally be reached on 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

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